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April 13, 2012

Federal Election Commission
Office of the General Counsel
999 E Street, N.W.
Washington, DC 20463

In re: MUR # 6545
Mark Miller v. Fred Kundrata, et al.
Complaint

To the Office of General Counsel:

Please see the attached Response to Complaint filed by all Respondents in the above-referenced matter. If you have any questions, or require anything further, please do not hesitate to contact the undersigned.

Very truly yours,

GARY F. FRANKE CO., L.P.A.



William M. Bristol

Enclosures

2012 APR 18 AM 11:29
OFFICE OF THE GENERAL COUNSEL
FEDERAL ELECTION COMMISSION

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FEDERAL ELECTION COMMISSION
MUR # 6545

2012 APR 18 AM 11:29

OFFICE OF GENERAL
COUNSEL

MARK MILLER

Complainant,

vs.

FRED KUNDRATA III

and

FRED KUNDRATA FOR CONGRESS COMMITTEE

and

WILLIAM BRISTOL

and

ROBERT SAUERS, JR.

Respondents.

RESPONSE TO COMPLAINT

Now come Respondents in response to a Complaint (MUR # 6545) filed against them and hereby state as follows:

Initially, it must be stated that this type of attack upon a person simply wanting to run for Congress in order to further serve his country, following lengthy military service, is petty, libelous and clearly chilling to the democratic process of running for office. Frederick Kundrata believed he would make a good candidate for the district in which he lives. Therefore, he decided to run for Congress knowing full well that he would likely garner few contributions, spend a significant amount of his own money and

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probably not win in his first attempt. Little did he realize the level of pettiness unfortunately associated with such an undertaking.

1. As to allegation 1, Failure to File Pre-Primary Report, such report has been filed as of April 11, 2012. Not timely filing the Pre-Primary Report was an oversight, as it was the belief of the Treasurer, William Bristol, that a Pre-Primary Report was not required when donations received were under a certain threshold, which is apparently not the case. Since donations received for the Pre-Primary period of January 1, 2012 through February 15, 2012 were Eight Hundred Twenty Dollars (\$820.00), other than a loan from the candidate, it was mistakenly believed that no report was required. Given the dollar amounts involved, we would respectfully request the Complaint does not warrant the use of Commission resources and should be dismissed.

2. As to allegation 2, Failure to Identify the Source of Loans, the loans were correctly classified as loans from the Candidate, however, the wrong entity was checked in a box on the electronic form, due mainly to inexperience with the electronic filing format as utilized by FECfile. It seems disingenuous at best to allege that the loans were not correctly identified, however we reiterate that the loans were from the Candidate, Fred Kandrata. Given the correct classification as loans from the Candidate, with an inadvertent check of the wrong entity in the dialog box in FECfile, we would respectfully request the Complaint does not warrant the use of Commission resources and should be dismissed.

3. As to allegation 3, Failure to Report Contributions And/Or An Indebtedness, Fred Kandrata, approached a web design firm to begin designing a

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website logo and hosting of a website. Mr. Kandrata did not know whether or not he was going to run at this point or not. Nothing done at this point was "testing the waters," as defined by the Code of Federal Regulations. Further, at the time Mr. Kandrata was residing in Kentucky, where he was enrolled in law school. Further still, there was no certainty as to what District in which Mr. Kandrata would or could be running at this point since redistricting was not yet set (see attached *Cincinnati Enquirer* article Court ruling throws 2012 elections into chaos). The expenditure to Pixels and Dots was duly reported on the FEC Form 3 Report of Receipts and Disbursements. There was no failure to report such expenditure by the Campaign Committee, once such entity was established. Further, the willfully misinformed and theatrical allegation that there were unreported contributions is false. Therefore, we would respectfully request the Complaint does not warrant the use of Commission resources and should be dismissed.

4. As to allegation 4, Failure to Report Expenditures and Receipts, it is astounding the preciseness with which such allegation is made (i.e. at 10:59 am). It is further astounding that the sum total of the facts upon which this allegation is made is the Complainant's use of the word "Obviously." Respondents have duly included the expenditure for signage on the Ford Transit vehicle in the filing of the Pre-Primary Report filed on April 11, 2012. Said expenditure was to Deal Impressions on February 14, 2012. Therefore, we would respectfully request the Complaint does not warrant the use of Commission resources and should be dismissed.

5. As to allegation 5, Failure to Timely File Statement of Candidacy, it was previously indicated hereinbefore that Mr. Kandrata had approached a web design firm to design a site and a logo. Obviously, that firm required payment up front. Mr.

Kundrata was unsure of whether or not he was going to run for office at this point, however his actions did not constitute "testing the waters." Further, as noted above, the redistricting effort in Ohio was ongoing and was not set as to where the districts would be drawn and was uncertain as to what district in which Mr. Kundrata would or could be running for Congress. Mr. Kundrata filed as soon as was practicable and well within 15 days of becoming a candidate. Therefore, we would respectfully request the Complaint does not warrant the use of Commission resources and should be dismissed.

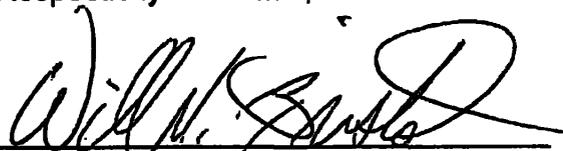
The Complaint goes on to note irregularities in the Ohio Primary Election. It is unclear why such speculation appears in the Complaint if not to allege some misdeed on the part of Respondents, despite the disingenuous caveat to the contrary. What is clear is that by including this section of meaningless, baseless misinformation, such Complaint is evidencing the shameful, cowardly and wasteful nature of the entire Complaint. It is hard to fathom how such a small campaign by a first-time candidate, who ultimately received 3% of the vote total, could engender a six-page Complaint that does not allege any harm to Complainant, nor to the public in general, save a general statement that transparency in campaign finance is important. This particular section of the Complaint ought to be fully disregarded as it is included only as an attempt to create prejudice toward the Respondents; and poison the atmosphere in which this Complaint is regarded. Inclusion of this section of the Complaint goes beyond the intents and purposes of an FEC Complaint and should be cause for a rebuke to the Complainant and his attorney(s).

That being said, it is not our intent at all to minimize the importance of following the laws and regulations under which candidates and the Federal Election Commission

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operate. Clearly it is important to maintain transparency in campaign finance and Respondents have tried to comply as best they could, given a first attempt for all involved and a decidedly non-prolific user of technology muddling through with electronic filing. Essentially this campaign was about one man willing to spend some of his own money trying to run for Congress. He went in to this without any agenda against another party, without any particular animus for other candidates, only with the feeling he held that he would make the best congressperson. For his trouble, he has received this Complaint that not only attempts to impugn him for making some clerical mistakes along the way, but attempts to smear and libel him with artfully-worded allegations with no basis in fact. It is my hope we have accounted for our actions fully to the Commission's satisfaction and we respectfully request the Complaint be adjudged to not warrant the use of Commission resources and be dismissed. It is our further request that the Complainant and/or the attorney(s) who clearly wrote this Complaint be cautioned at least, and condemned at best for filing this Complaint in the manner in which it was made.

Respectfully submitted,



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October 15, 2011

Court ruling throws 2012 elections into chaos

By Howard Wilkinson
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The Ohio Supreme Court's decision to allow Democrats to go forward with a petition drive to stop the Republican congressional redistricting plan has thrown the 2012 congressional elections into chaos.

Candidates for Congress – incumbents and challengers, Republicans and Democrats – will have to sit on their hands for a while to see when they should file and if the districts they planned to file in will even exist.

It is not entirely clear yet, but it would appear now that congressional candidates will file petitions by the Dec. 7 deadline for districts that may no longer exist by the planned March 6 primary.

Or they could be forced to run in a statewide primary election for Ohio's 16 U.S. House seats, where the top 16 Republicans face the top 16 finishing Democrats in the November 2012 election.

Or they could end up in running in vastly different-looking districts than they had expected to, if legislative Republicans and Democrats can work out a solution to the impasse.

Matt McClellan, spokesman for Ohio Secretary of State Jon Husted, who wanted to stop the petition drive, told The Enquirer on Saturday that the ruling threw "a monkey wrench" into not only the congressional candidate filing deadline, but the deadline for presidential candidates.

If the March 6 date holds, the primary would be held on "Super Tuesday," when several other states – Texas, Virginia, Oklahoma and Tennessee among them – will be holding presidential primaries. If the primary was moved back to May, the filing deadline could be pushed back and the primary could lose much of its significance in the national GOP race.

"We just don't know the answer yet," McClellan said.

The only thing that could stop the chaos is if Republicans go to Democrats in the legislature and work out a new plan – one that does not, as independent analyses have shown, give the GOP a 12-4 advantage in the state's 16 congressional districts.

"The ball is in the Republicans' court now," said Ohio Democratic Party chairman Chris Redfern, who will head the petition drive to collect 231,147 valid voter signatures to put the GOP' congressional redistricting plan on the November 2012 ballot.

If he succeeds in getting that many valid signatures in 90 days, it would put the GOP redistricting plan passed in September by the Ohio General Assembly on hold and force an election where candidates for Congress have to run statewide next year.

It would also mean that the plans for a March 6 primary – which was included in the GOP redistricting bill – wouldn't happen; and that the Ohio primary might be pushed back to May or even June.

If the legislature's Republicans and Democrats don't come to an agreement on a new map, Redfern said it could mean that a federal court would end up drawing Ohio's congressional map.

"I don't think that is an outcome the Republicans would like," Redfern said.

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Ohio House Speaker William Batchelder, R-Medina, said in a statement that Republicans in the legislature "warned the public that the Democrats' plan was to stymie the General Assembly's constitutional duty to pass a congressional redistricting plan, and ultimately have a map imposed on Ohio by unelected federal judges, who may be judges from Michigan, Kentucky and Tennessee."

The chaos started Friday night, when the Ohio Supreme Court – in a 7-0 vote – told Husted that he must accept a referendum petition that a Democratic group called Ohioans for Fair Districts plan to submit to challenge the GOP redistricting plan by putting it on the November 2012 ballot for an up-or-down vote.

Last week, Husted argued that the bill creating the new congressional districts wasn't subject to a referendum because Republicans wrote into the law a \$2.5 million appropriation for local boards of election. Husted's position was that referendums aren't allowed on appropriation bills under Ohio law.

The Ohio Supreme Court, which has six Republicans and one Democrat, emphatically disagreed.

Saturday morning, Redfern guaranteed that his group would come up with enough signatures. He said his group would go to the Ohio Supreme Court and Husted on Monday asking that they begin the 90-day window for collecting signatures.

"We will have people out at every polling place in Ohio on the Nov. 8 election gathering signatures, and you know that there will be a high rate of valid voters signatures, because those are people going to the polls to vote," Redfern said.

"The Republicans need to think long and hard about what they do next," Redfern said.

The last time an Ohio congressional district map ended up on the ballot was in 1915, when Democrats forced a vote and Ohio voters rejected a Republican-drawn map. The next year, the GOP fought the vote in court; and the U.S. Supreme Court upheld the right of a state referendum on a congressional redistricting law. Republican legislative leaders are defending their plan.

Batchelder called the Ohio Supreme Court decision "the first step into judicial interference in this process."

The map approved by Republicans, Batchelder said, is "fair and legal."

The Ohio Supreme Court, in its Friday night decision, did not suggest that the plan passed by the Republicans was unconstitutional. Instead, the court ruled that the appropriations inserted into the redistricting bill don't meet the criteria to shield it from a referendum effort.

Saturday morning, Ohio Senate President Tom Niehaus, R-New Richmond, reiterated that he believes the maps drawn by the GOP legislature are "legal and constitutional."

Asked if GOP legislative leaders would try to come to some agreement with Democrats, Niehaus said he would be holding a conference call Saturday with other GOP leaders and their legal counsel about what to do next.

"I'm not even sure at this point what Redfern is asking us to do," Niehaus said. When the 2010 Census numbers came out, Ohio lost two congressional districts because of slow population growth, going from 16 to 18 districts.

Ohio Attorney General Mike DeWine, a Republican, issued a legal brief recently saying that the 16 Ohio congressional districts must be finalized by Dec. 7, in order to "ensure proper administration of the March 2012 congressional primary." That clearly is not going to happen.

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Caleb Faux, executive director of the Hamilton County Democratic Party, said his understanding is that those who wish to run for Congress next year are still required to file by the Dec. 7 filing deadline, "but they'll have absolutely no idea what their districts are going to end up looking like."

And, Faux said, "they could find themselves having to run statewide in an at-large election for one of 16 seats. Nobody knows at this point. Everything is up in the air."

Dan Tokaji, a professor of election law at the Ohio State University Moritz School of Law, said he believes the Ohio Supreme Court was "dead-on right" in its decision. "If there is anything surprising about this, it's the fact the Republicans thought they could get around the possibility of having a referendum," he said. "If there is chaos, it is entirely of the legislature's making."

Additional Facts

How congressional redistricting is done

Governance: U.S. Constitution, decades of case law governing consistency with the 14th and 15th amendments to the Constitution, such as the 1965 Voting Rights Act.

Responsible party: The Ohio General Assembly, which produced House Bill 319 - passed in September by Republicans in the Ohio House and Senate. It set the new district boundaries for 16 Ohio House seats. The Ohio constitution gives the job of re-drawing congressional district lines to the legislature every 10 years, based on U.S. Census figures. Republicans control both houses of the legislature, so they controlled the process.

Target populations by district: 16 districts with approximately 721,032 people in each.

Statutory deadline: There is none, but for practical purposes, the legislature tries to have new districts in place as soon as possible, so candidates can file for the right seats and, if needed, primaries can be held.



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